



UNIVERSITY OF TORONTO
FACULTY OF LAW

BORA LASKIN LAW LIBRARY



3 1761 10634442 7

HISTORY OF THE COMMON LAW

FALL 2019

COURSE BOOK

PROF. SIMON STERN

K
588
.S73
2019
c.1

BORA LASKIN LAW LIBRARY

SEP 25 2019


FACULTY OF LAW
UNIVERSITY OF TORONTO

HISTORY OF THE COMMON LAW

FALL 2019

COURSE BOOK

PROF. SIMON STERN



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/historyofcommonl00ster>

PROF. SIMON STERN
HISTORY OF THE COMMON LAW – FALL 2019
COURSE BOOK

TABLE OF CONTENTS

Page

Criminal Procedure and the Origins of the Jury System

S.B. Chrimes, English Constitutional History	1
Sayles, Medieval Foundations	5
C.S. Orwin, The Open Fields	12
<i>Walter v William Thomas</i>	17
Pollock & Maitland, Hue and Cry, History of English Law, vol. 2, pp 178-180	18
<i>Jordan v Simon</i> (1219)	20
<i>Thomas v Alan Harvester</i> (1202)	21
Jury of Accusation, Assize of Clarendon (1166)	23
The Ordeals, from Hanawalt	26
H.G. Richardson & G.O. Sales, Sanctuary & Abjuration - Fleta	28
Bedfordshire Coroners' Rolls (1276)	30
Willingham Fire Case (1202)	31
Maitland, on appeals after Clarendon (1221)	32
Abolition of the Ordeals, Fourth Lateran Council (1215)	34
R.C. van Caenegem, "The Law of Evidence in the Twelfth Century" (1965)	35
T.F.T. Plucknett, The Decree of 1219	39
J.H. Langbein, Torture and the Law of Proof (1977), pp 75-76	40
Pollock & Maitland, History of English Law, vol 2, pp 647-649	43
Meekings on the General Eyre	46
Maitland, Pleas of the Crown, pp xxxiii-xxxiv	48
Meekings, excerpts from Wiltshire Eyre Rol, 1249	50
Dawson, A History of Lay Judges, pp 128-129	53
R.C. van Caenegem, The Birth of the English Common Law (1988), pp 106-107	55

Civil Justice

Writs – praecipe & ostensurus quare	57
R.C. van Caenegem, excerpts from Royal Writs in England	61
Pollock & Maitland, The Forms of Action, pp 558-559, 561-565	66
Maitland, excerpts from The Forms of Action at Common Law	70
Glanvill, Novel Disseisin	71
Maitland, The Forms of Action at Common Law pp 26-29	72
Baker, An Introduction to English Legal History, pp 60-63	74
Pollock & Maitland, End of Writ Creation	78
Select Bills in Eyre AD 1292-1333	79
A. Harding, Bills and Plaints, 1250-1350	80
Sayles, Medieval Foundations of England, pp 448-454	83

Shaping the Legal Profession

<i>St. George v Prioress of Easebourne</i> (1293)	90
Legal Proceedings in English (1731)	91
J Fortescue on the Serjeants' order, c 1470	92
Dawson, excerpt from <i>Development of Legal Institutions</i>	94
Brand readings	96
Thorne, <i>The Early History of the Inns of Court</i>	108
Holdsworth on the Year Books (1908)	118
J.H. Baker, excerpts from <i>Case Law in Medieval England</i>	120
M. Richardson, from <i>The Medieval Chancery Under Henry V</i>	133
J.H. Baker on the end of the Year Books, pp 180-182	134
T.F.T. Pluknett on the Abridgments	136
E. Coke on Littleton	138

The Transformation of Juries and Reconstruction of Criminal & Civil Justice

D. Crook, <i>The End of the Eyres</i>	141
D. Klerman, <i>Was the Jury Ever Self-Informing?</i>	147
Criminal and Civil Justice Act, 1352	150
Observance of due Process of Law, 1368	151
Cam, <i>Shire Officials, Coroners, Constables and Bailiffs</i> , pp 143, 169-171	152
T.F.T. Pluknett, <i>Origins of the Commission of the Peace</i>	155
An Act Concerning Justices of the Peace, 1361	158
Thayer, <i>A Preliminary Treatise on Evidence at the Common Law</i> , pp 97, 100, 102, 104-108, 120-124	159
Seipp, <i>Jurors, Evidences and the Tempest of 1499</i> , pp 82-85	169
Musson, <i>Public Order and Law Enforcement</i> , pp 200-205	171
Fortescue, <i>On the Laws and Governance of England</i> , 1470, pp 38-40	174
Elizabethan Statute of Perjury, 1563	176
Milsom, <i>Historical Foundations of the Common Law</i> , pp 70-74, 79	177

The Rise of Equity

Ives, <i>Common Lawyers of Pre-Reformation England</i> , pp 194-195	183
T.F.T. Pluknett, <i>Formation of the Court of Chancery</i>	185
Petition of Edward Bokelond, 1394	189
Petition of Margaret Grimsby, c. 1401-03	191
Resistance to Chancery, <i>Parliament Roll</i> , 1377 and 1421	192
Dawson, <i>A History of Lay Judges</i> , pp 149-150	195
<i>Cook v Fountain</i> (1674)	197
Kessler, <i>Our Inquisitorial Tradition</i> , pp 1216-1217	200
Pollock & Maitland, <i>The Use, in early practice</i>	202
R.H. Helmholz, <i>The Early Enforcement of Uses</i>	204
Goodwin, <i>Petition to the Chancellor</i>	215
Common Pleas (1464)	217
Enforcing a Promise in Chancery (1468)	219

YB 4 Hen 7, Remedies in Chancery (1489)	220
Pollock, Equity is a Roguish Thing, Table Talk of John Selden	222
Simpson, Conscience and Chancery	223
Simpson, The Penal Bond with Conditional Defeasance, pp. 393-395	225
Double Suit on a Sealed Instrument, 1343	229
Jones, excerpts from Elizabethan Court of Chancery	230
Pollock & Maitland, Contracts of Record (1898)	231
Exchequer Chamber (1482)	232
Getzler, Relations of Chancery and the Common Law Courts in the 15 th Century	233
Statute of Praemunire (1353)	234
Res Judicata Statute (1403)	235
Glanville's Case, 1615	236
Decree of King James, 1616	239

The Reform of Chancery, Fusion of Law & Equity

S.E. Prall, Effort fo Abolish Chancery in 1653	240
Yale, Survival of Chancery	244
A.V. Dicey, on Married Womens' Property, 19 th Century	245
Triennial Act, aka Meeting of Parliament Act, 1694	248
T.F.T. Pluknett, Relations of Law & Equity	249
Dickens, Bleak House, 1852, Chapter 1	250
M. Lobban, on 19 th Century Equity Reform	255
J. Bentham, on Chancery Corruption, c. 1770s	259
Masters in Chancery, Legal Examiner, 1832	260
Dawson, A History of Lay Judges, pp 151-159, 170-172	261

Controlling the Jury

Blackstone, on attaint.....	273
Green, Fining Jurors in Star Chamber	275
Fining the Jury in <i>Throckmorton</i> (1554)	279
Bushell's Case (1670)	280
Arrowsmith's Case, Old Bailey (1678)	282
<i>Wood v Gunston</i> (1655) 82 E.R. 867	285
<i>Bright v Eynon</i> (1757)	286
<i>Coddrington v Webb</i> (1691) 377, pl. 3, S.C.	291
W. Tidd, Grounds for New Trial, 1794	292
Langbein, Origins of the Modern Law of Evidence	294
Blackstone on the Civil Jury	300
C. Hanly, The Decline of Civil Jury Trial in Nineteenth-Century England	302

Rebuilding Criminal Procedure: The Marian Pretrial and the Altercation Trial

<i>Long's Case</i> , 1607, Hawarde's Reports in Star Chamber	312
Coke, on the Star Chamber, c. 1630	313
T. Barnes, Star Chamber Procedure	315

	Page
<i>Smith's Case</i> , 1586, Hawarde's Reports in Star Chamber	318
Abolition of Star Chamber, 1641	320
Marian Committal Statute, 1555	321
Sir T. Smith, <i>De Republica Anglorum</i> , 1565, pp 107-108	322
Sir T. Smith, <i>De Republica Anglorum</i> , 1565, pp 111-115	324
<i>R v John Baltee</i> , Old Bailey, 1678	329
W. Hawkins, <i>A Treatise of the Pleas of the Crown</i> , 1716-1721	330
J.F. Stephen, <i>A History of the Criminal Law of England</i> , 1883, pp. 349-350, 354, 357	331
L. Radzinowicz, on Tyburn	335
<i>R v Elizabeth Wooly</i> , Old Bailey, 1686	337
Blackstone Commentaries on The Laws of England, v4, pp 277-280	338

The Growth of a Defensive Safeguard

Treason Trials Act, 1696	342
An Act for Encouraging the Apprehending of Highwaymen, 1692	344
<i>R v Olander Boston</i> , Old Bailey, 1686	347
B.L. Berger, Resistance to New Trial, Criminal Appeals as Jury Control	348
B.P. Smith, excerpts from <i>The Presumption of Guilt and the English Law of Theft, 1750-1850</i> , pp. 133, 135, 154-155, 164, 166-167	358
B.P. Smith, <i>The Emergence of Public Prosecution in London, 1790-1850</i> , pp. 29-32	365

Legal Literature

Holdsworth, <i>A History of English Law</i> , pp. 364-367, 371-374	369
J.H. Langbein, excerpts from <i>Chancellor Kent and the History of Legal Literature</i> , pp. 457, 585-593	377

